



March 8, 2006

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Federal Communications Commission
445 12th Street, SW
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RE: Response to Comments Regarding Blind Bidding

Commissioners and Staff:

Recently, the Department of Justice posted an expression of support for "blind bidding," as did the Federal Trade Commission. Below is a reply.

1. The author of this article is outside the auction process with no information regarding the motives or behaviors of participating bidders. However, the presumption of innocent until proven guilty would seem to apply.
2. "Stealth bidding" creates more uncertainty and risk for bidders. They will, presumably acquire liability if they "leak" their own identities or learn (as opposed to infer) the identities of others.
3. Although somewhat equivocal, the agencies seem to have a "let's give it a go" attitude. For example, the FTC commented that "the uncertainty bidders face" from blind bidding is inconsiderable because the auction is for "only for 90 MHz," implying that if we are wrong, we can fix it later. In reality, today's flow of spectrum supply is slow and uncertain, and the Auction 66 spectrum is heavily encumbered and will stay so at least until the proceeds of the auction are known.
4. The record of buyer stealth is well established in the real estate industry. For example, we can thank John D. Rockefeller Jr. for covertly buying up land that now comprises Grand Teton National Park, but the landowners who were deceived were not beneficiaries of "stealth."

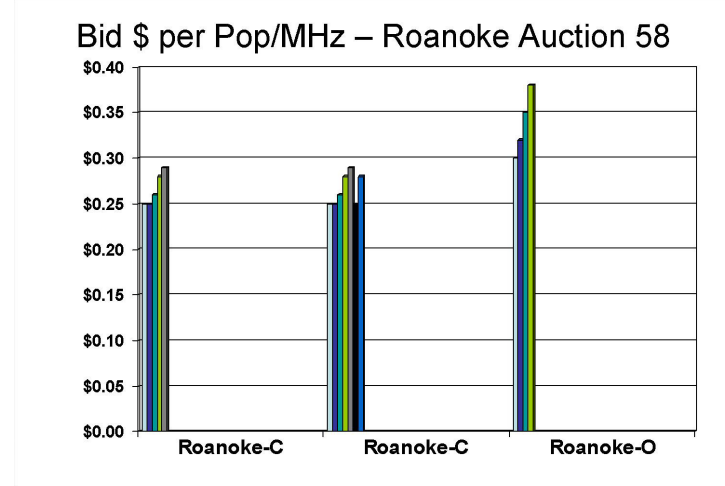
5. The case for change is speculative, with no quantification of benefit.
 - a. The FTC commented that “the possibility of bidders using collusive strategies ...is well established in the theoretical economics literature.” A “well established possibility” is not a “fact,” nor is it quantifiable.
 - b. The DOJ submission states that “...previous investigations and analysis of bidding data in recent auctions substantiate the potential for signaling and market allocation agreements....” Again, “substantiating” a “potential” is not substantiating a fact. The “case” offered by the DOJ does not seem to demonstrate adverse impact on the auction (see point 9 below).
 - c. The justifying reference to “theoretical economics” is far too general. The agencies have gone to the game theory “well” rather too often, but there is little evidence they have gone to the behavioral finance or the organizational behavior wells nor to others that are relevant.
6. The FCC will be burdened by having to define detailed rules, plug all leaks regarding the suppressed feedback, and deal with exceptions. The DOJ may find itself either “ghost-busting” supposed leaks or prosecuting real ones.
7. During the auction, the FCC will be handicapped in addressing bidder-versus-bidder complaints in any sensible way, without disclosing bidder identity
8. DOJ interpretation of Auction 58 outcomes regarding Roanoke licenses seems not to fit the essential facts and indicates a misapprehension of Auction 58 rules.
 - a. The DOJ reported that “one bidder affiliated with a large wireless carrier chose to bid against the smaller bidder ... rather than against the two other large carrier affiliates...it eventually bid significantly higher (nearly 25% more) ...to win their nearly identical license blocks.” (In raising the matter of “affiliates,” the DOJ seems to be diverting to a entirely different debate regarding “small company” preferences.)
 - b. In Roanoke, the FCC offered one “open” license on which anyone could bid, including large carriers, and two “closed” licenses on which only designated smaller entities could bid. The

spectrum was “nearly identical,” but the bidding pools were not identical. It appears that the DOJ was misled by the complex rules, further validating the need for auction simplification rather than additional complication.

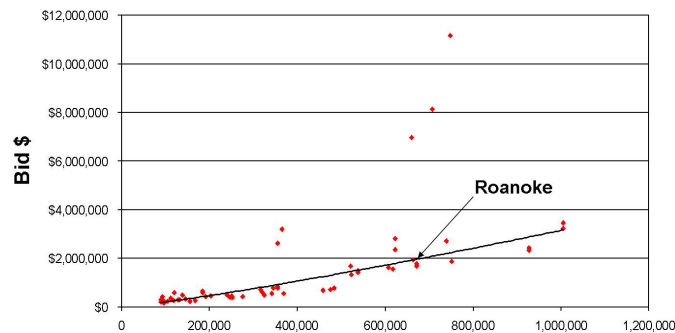
c. The license supported by the wide-open bidder pool sold for \$2,509,000, while the licenses “closed” to large carriers sold for \$1,947,000 and \$1,945,000 respectively. In Roanoke, as in most other locales with both “open” and closed” licenses, large bidders, not smaller bidders, were disadvantaged in terms of price per pop.

d. Roanoke auction results were on trend. If Roanoke had accidentally been left out of Auction 66, simply plotting it by population on the two Auction 58 scatter plots below would have generated a very close approximation of what were the actual selling prices.

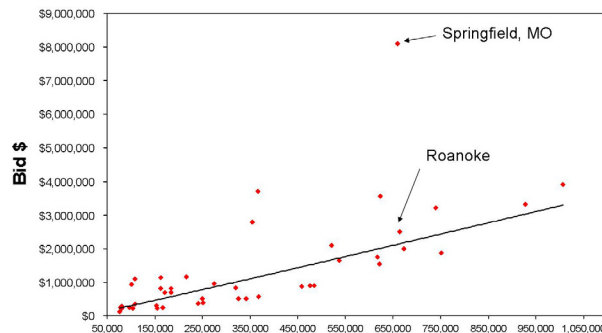
In the chart entitled Bid \$ per Pop/MHz – Roanoke Auction 58 below, the licenses labeled “C” indicating the two closed licenses and the license labeled “O” indicating an “open” to all license. The individual bars represent individual bids. It is followed by scatter plots showing Roanoke’s general fit to Auction 58 results.



Auction 58 "Closed" Markets Up to 1,000,000
Population: Winning Bid as a Function of Population



Auction 58 "Open" Markets up to 1,000,000 Population



Conclusion

Preventing bidders from knowing whom they are bidding against does not address a clearly defined problem, nor offer an assured solution to that rather ethereal behavior, “tacit collaboration.” On the other hand, implementing “stealth bidding” creates practical problems, and it is unpopular with the smaller bidders that it purports to protect.

As the designer of band plans and the “auctioneer” of spectrum, the FCC functions as a quasi-business, dependent on paying customers to carry its plans to fruition. Achieving bidder-friendliness and, especially, *prospective* bidder friendliness should be a priority. A lesson from the “C” versus “O” licenses results in Auction 58 is that bidder pools with more liquidity are better for the “auctioneer” than bidding pools with less liquidity.

Therefore, rather than add complexity and restrictions, the FCC should cut through the thicket of complexity to streamline the auction process.

Arguing against “stealth bidding” proposal is not a matter of arguing against better enforcement of necessary rules, but rather for the government to focus finite resources on aggressive enforcement of the rules that exist (and, for that matter on simplified versions) rather than proliferating more rules.

Sincerely,

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